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A Survey of Public Review Hearings in Northern Canada

Northern Affairs Program

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A Survey of Public Review Hearings in Northern Canada

K. Bruce Waddell

Public Review Division
Major Projects Assessment Branch
Northern Affairs Program
Department of Indian Affairs and Northern Development

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Preface

The information contained in this report was researched and compiled by the author to provide a general guide to public review hearings conducted in northern Canada and, using selected parameters, to attempt to ascertain any developing trends. For detailed information on specific public review hearings, the reader should contact the sponsoring department or agency direct as well as review the growing literature, some of which is identified in the bibliography, dealing with public hearings and public participation in decision-making. The views presented in this report are those of the author and do not necessarily represent the views of the Department of Indian Affairs and Northern Development.

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*Northern Pipelines Branch is now known as the Major Projects Assessment Branch.

Abbreviations

AHPI	Alaska Highway Pipeline Inquiry
APP	Arctic Pilot Project
ATC	Air Transport Committee
CAC	Consumers' Association of Canada
CARC	Canadian Arctic Resources Committee
CBC	Canadian Broadcasting Corporation
COPE	Committee for Original Peoples' Entitlement
CRTC	Canadian Radio-television and Telecommunications Commission
CTC	Canadian Transport Commission
CYI	Council for Yukon Indians
DIAND	Department of Indian Affairs and Northern Development
DOC	Department of Communications
DOE	Department of Environment
DPW	Department of Public Works
EAMES	Eastern Arctic Marine Environmental Studies
EARP	Environmental Assessment and Review Process
EIS	Environmental Impact Statement
EMR	Department of Energy, Mines and Resources
FEARO	Federal Environmental Assessment Review Office
GNWT	Government of the Northwest Territories
IBNWT	Indian Brotherhood of the Northwest Territories
ITC	Inuit Tapirisat of Canada
LNG	Liquefied Natural Gas
MANWT	Metis Association of the Northwest Territories
MVPI	Mackenzie Valley Pipeline Inquiry
NEB	National Energy Board
NHW	Department of National Health and Welfare
NPA	Northern Pipeline Agency
YTG	Yukon Territorial Government

Introduction

In a democratic system, political action has traditionally occurred in the form of representative government, although, during the past 25 years, the electorate has increasingly demanded more direct input into the affairs of government (Smith, 1979). One form of direct input involves that which is termed public participation.[1] The past decade has witnessed a proliferation of public participation in Canadian governmental affairs (Estrin, 1977). Such participation involves numerous procedures and processes including public hearings.

Public hearings have been extensively used in northern Canada during the 1970s (Cruikshank, undated). The factors surrounding the establishment and operation of these hearings, the development of various types of hearings and emerging trends for northern public review hearings are discussed in this paper.

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[1] Public participation is defined by Burton (1977) as government and segments of the public actively sharing in the decision-making process.

Public Participation and Public Review Hearings

Public Participation

Government policy is developed through the interaction of economic, social and political forces operating on and through government institutions and processes (Simeon, 1976). The principle behind government policy in a parliamentary democracy is, according to Weick (1979), the accountability of the elected policy-makers to the electorate. Accordingly, policy needs to be developed in an environment that is continuously sensitive and responsive to the electorate.

The traditional dichotomy between politics and administration (policy-making and execution) is being replaced by administrative policy-making and adjudication (Hodgetts, 1971). One of the current conditions in Canadian public policy observed by Breton (1977) is the changing configuration of centres of power and influence affecting public policy. Hodgetts (1971) suggested that these changes in power centres for public policy have caused the traditional communication channels, from the electorate to Parliament, to become inadequate, necessitating the development of new methods to convey electorate demands into public policy and to maintain government accountability. The political process through which the electorate translates its demands into public policy is changing (Miesel, 1976). Weick (1979) proposed that public consultation and participation represents one of the principal methods developing to meet these changing needs.

Goldstein (1979) viewed the public interest movement as a major vehicle for portions of the electorate to express their demands and suggested that this form of public participation will become increasingly important during the coming decade. Pross (1975) has characterized the Canadian policy system as one that stresses consultation and generating consensus, rather than conflict. This characteristic is the key factor behind government sponsored public participation.

McIntosh (1977) detailed public participation techniques which include, among others, individual contact, public meetings, advisory groups, task forces, committees and boards. O'Riordan and O'Riordan (1979) noted that Canadian statutes often dictate the particular public participation techniques that should be undertaken, even though such techniques may be costly, time-consuming and frustrating for all participating. One participation technique is the public review hearing.

The public participation movement has evolved over the past 25 years in a sporadic and unorganized manner (Smith, 1979), and involved three fundamental groups: the public, government and industry. Perceptions regarding the need, purpose and effectiveness of public participation varies between and within these groups. Ideally, public participation should aid the operation of democratic systems and contribute to sound decision-

making by affording individuals and groups equal, direct communication with government, as well as with other groups and industry, exposing the broadest range of concerns and providing opportunities for information exchange (Kure, 1977; Shor, 1977). In fact, public participation usually occurs with the public in a position of weakness, since government and industry possess superior resources, including information, technical expertise, financial resources and contacts (Estrin, 1977; O'Riordan and O'Riordan, 1979). In addition, government controls and dictates the occasions and terms under which public participation occurs. Burton (1977) described some of the specific objectives behind public participation as a means to:

- generate information;
- influence policy;
- identify alternatives;
- provide services and facilities;
- evaluate alternatives, options and impacts;
- test public opinion and response; and
- resolve conflicts and achieve consensus.

Continued public demand for opportunities of public participation, as evidenced during the past decade, and government responsiveness to these demands, suggest that despite inherent deficiencies, public participation opportunities are considered to be worthwhile by both the public and government (Kure, 1977).

Public Hearings

One particular opportunity for public participation that has experienced considerable use in Canada during the past decade is the public hearing (Burton, 1977). This is also the case in northern Canada, as evidenced by the statement that "the seventies will be remembered by northerners as the Age of Inquiries" (Cruikshank, undated).

Hearings constitute the public phase of the assessment process and act as the lens through which government decision-makers perceive public and expert reaction to a specific project or proposal (Weick, 1979). Public hearings contribute to the identification and discussion of issues but cannot, according to Le Dain (1973), necessarily be safely used as an instrument to tranquilize public opinion.

Public hearings have, as has public participation in general, undergone considerable discussion as to their perceived and actual goals and effectiveness. Critics note that public hearings can cause inefficient government decision-making; result in costly delays to projects; and offer only the appearances of public consultation when in fact they are used to legitimize government decisions.

Hornback (1977) suggests that public hearings do not facilitate effective policy development and public participation because they usually

occur towards the end of the planning effort, after the policy decisions have been made; they are generally adversarial in nature, which precludes effective consultation, problem solving or consensus formation; proceedings tend to be ritualized, legalistic and formal in nature, which intimidates rather than encourages public participation; and, they only serve a purpose so long as project planning and decisions are not contingent on the attainment of objectives identified through the hearings. There is a real danger of expensive, protracted hearings and inefficient use of people's time and energy, resulting in strong reaction against public hearings (O'Riordan and O'Riordan, 1979). Industry has strongly criticized public hearings because they can result in project delays.[2] Pross (1975) characterizes public hearings as being superficial, while Weick (undated) notes that public hearings are susceptible to manipulation by various participants, with the public possessing the least influence of all. Cruikshank (undated) sees public hearings as a rationalization for commitments already made to a project. O'Riordan and O'Riordan (1979) note that those projects supported by strong political commitments and powerful private interests generally receive approval regardless of public input.

Advocates of public hearings see them as providing the opportunity for all parties to become informed as to the position and interests of other participants; ensuring accountability and credibility of all participants due to the public scrutiny afforded; generating more acceptable projects; and, in some measure, affecting policy development, both indirectly and directly.

Sewell (1977) describes perceptions by public and government participants in public reviews as providing the means for developing projects that will have broad public acceptance, as a result of public involvement; of ensuring that government performs its responsibilities efficiently; for reducing excessive decision-making power of planners and bureaucrats; for educating participating groups about each others' concerns and interests; and for ensuring that minority rights are taken into account. Schuck (1977) and Burton (1977) observed that public hearings are effective for consultation and the exchange and questioning of a broad range of opinions and information. The public nature of hearings provides credibility to the results as well as to the participants (Le Dain, 1973; Weick, undated) and increases public acceptance of the outcome (McIntosh, 1977). Paglin and Shor (1977) and Stabler and Olfert (1980) noted that governments have generally recognized the legitimacy and value of public hearings in policy formation, although this recognition does not preclude misuse of public hearings. This misuse of hearings is potentially the case with all participants.

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[2]For an example, see comments appearing in the March 21, 1980 Calgary Herald, pg. D1 - "Public Hearings Could Jeopardize Mega Projects."

It should be apparent from the foregoing description that there are numerous advantages and disadvantages, both real and perceived, associated with public hearings. The proliferation of hearings during the past decade and continued public involvement at these hearings suggest that all factors being considered, the public, government and even industry see a net advantage, realized or potential, in the continued use of this type of public participation. The real and perceived benefits accruing to the groups participating in public review hearings (governments, industry, interest groups, private individuals, politicians) as well as those indirectly involved with hearings (media, local businesses) are too numerous and varied to be detailed in this paper.

Study Area

The past decade has witnessed considerable use of public hearings throughout Canada. The Yukon and the Northwest Territories provide numerous examples of public hearings, and since they are a region discrete from the rest of Canada in terms of their political boundaries, autonomy and constitutional development, land claims, demographic make-up and socio-cultural aspects, they present a convenient and unique area for the study of the development of public review hearings.[3]

Constitutional development in the Yukon and the Northwest Territories is such that the federal presence is much stronger than in the provinces.[4] In the provinces, responsibilities are divided between three levels of government: federal, provincial and regional/municipal. In the territories, provincial responsibilities are shared between the territorial government and the federal Department of Indian Affairs and Northern Development (DIAND) as described in the Department of Indian Affairs and Northern Development Act, the Northwest Territories Act and the Yukon Act (Acts of the Parliament of Canada, 1979, p. 446, 466 and 495, respectively). This intergovernmental situation is further complicated by

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[3]As described by Mair (1980) circumstances in the "forgotten" northern portions of the provinces bear a striking similarity to the state of affairs in the territories; the notable exception being that these areas are contained within provincial boundaries and jurisdictions. This paper does not attempt to include this area for consideration but recognizes this deficiency.

[4]While the devolution process is further advanced in the Yukon than in the Northwest Territories, Drury's (1980) description of constitutional development in the Northwest Territories provides insights into the fundamental differences between territorial and provincial government jurisdictional responsibilities relative to federal responsibilities.

other federal departments co-opting provincial-type responsibilities not fully dealt with by DIAND and the territorial governments, adding intra-governmental complications. This complex situation results in conflicts between the various bodies exercising provincial-type responsibilities, both inter- and intra-governmental, which in concert with the "remoteness" of the decision-makers, ultimately reduces the government's publicly perceived responsibility and responsiveness to the electorate.

The study area is currently being disputed by five separate native groups: the Council for Yukon Indians (CYI), the Committee for Original Peoples' Entitlement (COPE); the Dene Nation, formerly the Indian Brotherhood of the Northwest Territories (IBNWT); the Metis Association of the Northwest Territories (MANWT); and the Inuit Tapirisat of Canada (ITC). Native proposals for settling these claims include establishing various forms of native government to ensure the continuation of native cultures; controlling development; protecting renewable resources for hunting and trapping; and ensuring the viability of the native economy and culture. The federal government acknowledged native claims in 1973 but to date has only negotiated an agreement-in-principle with COPE. The atmosphere of uncertainty surrounding these outstanding native claims permeates all activities and planning in the study area.

The electorate in the study area is unique in comparision to the remainder of Canada, owing to its small size and cultural make-up. Approximately half the population consists of resident native people (Inuit, Indian and Métis) with the majority of the remaining non-native portion being transient, living in the north for a few months or years while "making their fortunes." Cruikshank (undated) has categorized those portions of the population that have participated at public hearings in the Yukon. She identifies the six following groups:

- the oldest native people, who retain their culture and language;
- the middle-aged native people, who have grown up in the midst of northern development;
- the young native people, who have grown up with southern education and have lost elements of their cultural heritage;
- the non-natives who live in the north because of the wilderness and freedom;
- the non-native entrepreneurs who support northern development; and
- the non-native "boomers" who support northern development whatever the human and environmental impacts.

The native portion of the population has traditionally operated by consensus, while the non-native component reaches decisions by vote or majority rule (Rees, 1978). Goldstein (1979) notes that the public participates in public hearings from a disadvantaged position. In the study area this public consists of numerous groups including the older native people, who by virtue of their culture are placed at a further disadvantage. Lotz (1977a) views the public in northern Canada as two conflicting groups - one

interested only in the economics of development, the other placing human and environmental considerations first. This is a somewhat oversimplified view of the study area's population.

Nonetheless, the study area encompasses many conflicting interests that influence public reviews in a unique and variable manner.

Northern Public Review Hearings

As indicated earlier, the 1970s witnessed many public hearings being conducted in the Yukon and the Northwest Territories (Cruikshank, undated). Northern public review hearings are, for the limited use in this paper, defined as

> public hearings implemented by federal departments and agencies with established regulatory and/or advisory responsibilities in the Yukon and the Northwest Territories to obtain local comment and consult with the residents and groups that have interests in the territories regarding the assessment of applications to government for the approvals needed before a specific proposal or plan may proceed.

This definition excludes consideration of the other, numerous public participation mechanisms and processes currently being used in the north. These are not included in order to limit the scope of this paper. Similarly, royal commissions of inquiry[5] and inquiries such as that recently completed by the Special Representative for Constitutional Development in the Northwest Territories (the Drury Inquiry)[6] are excluded by this definition. Royal commissions and the Drury Inquiry do not constitute hearings set up relative to established, ongoing federal administrative and regulatory responsibilities in the north. Also, because neither the government of the Yukon nor of the Northwest Territories has independently sponsored public review hearings, it is not possible to include this type of hearing in the definition.

Encompassed in this definition are two essentially different types of hearings: those established in response to regulatory responsibilities and those established more in an advisory or administrative capacity. To facilitate discussion in this paper, these two types of hearings have been termed regulatory hearings and advisory hearings. Regulatory hearings involve formal court proceedings with the majority occurring in southern

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[5]Royal Commissions are established pursuant to Part I of the Inquiries Act (Acts of the Parliament of Canada, 1979, p. 448).

[6]Established pursuant to section 14 of the Senate and House of Commons Act (Drury, 1980, appendix A).

locations; these hearings are conducted in a judicial manner because they involve the approval or rejection of projects having national implications and are primarily held in the centres where the decision-making bodies are located. The advisory hearings are less formal than the regulatory hearings and normally operate in the immediate vicinity of the hearings; these hearings are established and concluded at the discretion of the responsible federal minister(s), which results in very flexible procedures; and the hearing mandates tend to deal with more localized issues of non-national importance. In general the northern portion of regulatory hearings constitutes a small portion of a larger national set of hearings, while northern advisory hearings encompass virtually the entire hearing process for the specific proposal that resulted in hearings being conducted.

Regulatory hearings conclude with the presiding regulatory body presenting a ruling approving or rejecting the proposed action. These rulings are generally closed to further discussion except by means of judicial appeals. In comparison, the advisory hearings generally result in the hearings panel presenting recommendations to the responsible minister(s), who may then accept, reject or modify these recommendations and take whatever action is considered appropriate. The recommendations are potentially subject to considerable additional discussion through appeals to the responsible minister(s), Cabinet, Parliament and ultimately the judiciary.

The reader should note that in the legislation establishing hearings the terms "public hearing" and "inquiry" are cited. For the purpose of this study, the term "public review hearing" has been used to include both those hearings established by legislation and those hearings established through other means.

Sponsors of Northern Public Review Hearings

Northern public review hearings have been conducted by six different federal groups that have the legislative base and/or administrative perogatives in the Yukon and the Northwest Territories as indicated in Appendices 1 and 2.

These six federal departments and agencies are, in alphabetical order, the Canadian Radio-television and Telecommunications Commission (CRTC), the Canadian Transport Commission (CTC), the Department of Indian Affairs and Northern Development (DIAND), the Federal Environmental Assessment Review Office (FEARO), the National Energy Board (NEB), and the Northern Pipeline Agency (NPA).

Canadian Radio-television and Telecommunications Commission

The Board of Broadcast Governors was established in 1958, by the then recently elected Conservative government, to regulate broadcasting in Canada, which prior to 1958 had been controlled by the Canadian Broadcasting Corporation (CBC). In 1965, the Board of Broadcast Governors prepared a report on broadcasting that subsequently led to the enactment of the Broadcasting Act in 1968 (Acts of the Parliament of Canada, 1979, p. 397), which established the Canadian Radio-Television Commission. In 1975, the sections of the Broadcasting Act establishing the Canadian Radio-Television Commission were repealed. The Canadian Radio-television and Telecommunications Commission Act was enacted establishing the CRTC and transferring the responsibilities for telecommunications, found in the National Transportation Act and in the Railway Act, from the Canadian Transport Commission to the CRTC (Acts of the Parliament of Canada, 1979, p. 403, 465 and 477, respectively).

The CRTC is responsible for regulating and supervising the Canadian broadcasting system, with a view to implementing the broadcasting policy described in Section 3 of the Broadcasting Act; regulating the Canadian telecommunications system; and advising the Minister of the Department of Communications (DOC) on matters dealing with broadcasting. The CRTC is run by a group of 9 full-time and 10 part-time commissioners, who are appointed to renewable seven- and five-year terms, respectively, by the Governor in Council.

The CRTC, in exercising its responsibilities, has conducted three forms of public hearings in the north, pursuant to the Broadcasting and the National Transportation acts. The CRTC was one, if not the first, government agency to seek public participation through public hearings.

Broadcasting Act

Pursuant to Section 19(1) of the Broadcasting Act, the CRTC is required to hold public hearings regarding the issuance of broadcasting licences.

Sections 19(2) and 19(3) of the act permit the CRTC to hold, at its discretion, public hearings regarding the amendment and the renewal of broadcasting licences, respectively.

National Transportation Act

Pursuant to Section 45 of the National Transportation Act, the CRTC may hold public hearings regarding carrier rate increase applications.

The decisions of the CRTC made pursuant to the authority granted by the Broadcasting Act, the Canadian Radio-television and Telecommunications Commission Act and the National Transportation Act are final and conclusive. The decisions do not require Governor in Council approval. The legislation does, however, provide for appeals of CRTC decisions to the federal court on stated grounds and for review of CRTC decisions by the Governor in Council.

Canadian Transport Commission

The Canadian Transport Commission (CTC) was established in 1967, pursuant to the National Transportation Act. The CTC was formed to act as an overall regulatory authority for the licencing of carriers involved in all modes of transportation under federal jurisdiction. As such, the CTC became successor to the Board of Transport Commissioner of Canada, the Air Transport Board and the Canadian Maritime Commission; as well, it acquired jurisdiction over interprovincial or international transportation by commodity pipelines and motor vehicles (Janisch, 1979).

The CTC was organized into modal transport committees, initially consisting of rail, air water, motor vehicles and commodity pipelines. The International Transport Policy Committee was added in 1968, the Review Committee in 1970 and the Telecommunication Committee in 1972. This latter committee was later disbanded when the regulation of telecommunications was made the responsibility of the CRTC in 1976.

The CTC is a court of record consisting of a maximum of 17 commissioners who are appointed to 10-year terms by the Governor in Council (CTC, undated). Each modal committee consists of at least three commissioners meaning that commissioners must sit on more than one committee, thereby facilitating an intermodal approach to transportation regulation (Janisch, 1979).

In exercising its responsibilities, the CTC conducts numerous public hearings. However, of the seven committees only the Air Transport Committee has conducted public hearings in the Yukon and the Northwest Territories.

The hearings that have been conducted in the north were organized by virtue of the authority vested in the commission to hold them under the National Transportation Act.

National Transportation Act

Pursuant to Section 45 of the National Transportation Act, the commission is empowered to conduct public hearings into matters dealing with the application for and amendment of, or addition to, licences issued under the Aeronautics Act and the Transport Act. The CTC may also hold hearings regarding the setting of tariffs and tolls to be charged by carriers in the air, water and rail modes.

Department of Indian Affairs and Northern Development

The Department of Indian Affairs and Northern Development exercises dual responsibilities for northern and Indian affairs, and is appropriately divided into two operational groups, the Northern Affairs Program and the Indian and Inuit Affairs Program. The Indian and Inuit Affairs Program administers the Indian Act, which encompasses registered Indians in both the provinces and the territories (Acts of the Parliament of Canada, 1979 p. 446). The Northern Affairs Program administers numerous acts, including the Territorial Lands Act and the Northern Inland Waters Act, the mandates of which are confined to the Yukon and Northwest Territories (Acts of the Parliament of Canada, p. 486 and 466, respectively). Many functions of the Northern Affairs Program are similar to functions carried out in the provinces by provincial governments, while other provincial-type responsibilities have been transferred to the territorial governments. Although both programs exercise legislative responsibilities in northern Canada, it is the Northern Affairs Program that has been responsible for public review hearings conducted in the territories. The Office of Native Claims, a corporate segment of DIAND, is also active in northern Canada, but has not directly participated in DIAND-sponsored public review hearings.

Public review hearings which have been sponsored by DIAND were conducted under the authority of two articles of legislation, the Northern Inland Waters Act and the Territorial Lands Act.

Northern Inland Waters Act

The early portion of the 1970s witnessed government response to increased public awareness regarding the need for protection of the environment. This was evident in Canada with the establishment of the Department of the Environment (DOE) and the promulgation of the Northern Inland Waters Act in 1970. The drafting of the act was directed by the Honourable Jean Chrétien, then Minister of Indian Affairs and Northern Development. The Northern Inland Waters Act reaffirms the Department of Indian Affairs and Northern Development Act, which vests in DIAND the role of co-ordinating all northern inland water use activities and related legislation.

The Northern Inland Waters Act provides for pollution control and comprehensive water planning and establishes water boards in the Yukon and the Northwest Territories to licence water use. Each water board is composed of nine members appointed by the minister of DIAND with one representative each from DIAND, the departments of the Environment (DOE) and National Health and Welfare (NHW) and six members from the appropriate territory appointed on the recommendation of the commissioner. The chairman and vice-chairman are appointed from the water board membership by the minister of DIAND.

The water boards are empowered to conduct public hearings pursuant to Sections 15(1) and 15(2) of the act. Section 15(1) hearings are conducted by the water board, as and when it deems appropriate, regarding water use management and planning issues in the territories. Section 15(2) hearings must be conducted by the water board for all water-use licence applications, amendments or renewals. Following the public hearings the water board forwards its recommendations to the minister of DIAND, who either approves or rejects these recommendations. In the case of water-use licences, the minister can either approve the licence and the conditions attached to it by the water board, or reject the recommendations and return the application to the appropriate water board. Alteration of the conditions attached to the proposed licence by the minister is not permitted.

Water-use authorities may be granted without public hearings. A water use authority can be issued where water use will not exceed 50 000 gallons per day for a period of no more than 270 days, and is therefore suitable for most construction projects, exploratory drilling, etc. All other uses, such as municipal and mine requirements, require a water-use licence. Applications for a water-use licence must be submitted to the appropriate board; water use for domestic purposes by a person living on land adjacent to the waters, for fire fighting, or for flood control is, however, exempt from needing a licence.

Territorial Lands Act

The Territorial Lands Act was passed in 1952, along with the establishment of the then Department of Northern Affairs and Natural Resources, now DIAND, which became the department responsible for administering the act. It outlines the department's responsibility for and control of Crown lands in the territories, including surface and subsurface rights. This landlord-type responsibility is similar to that exercised by provincial governments in the provinces. The department controls the use of Crown land through the issuance of land use permits, which detail the specific use the land may be put to and which, through attached terms and conditions, prescribe specific actions the leasee must adopt to protect the environment.

Under Section 19(h) of the act, the department is empowered to conduct public inquiries into specific land use proposals and to advise the

minister of DIAND as to public opinion regarding acceptability of the proposal and about specific concerns that could be alleviated through the terms and conditions attached to land use permits. Recommendations prepared by the inquiry are forwarded to the minister of DIAND, who decides upon and implements appropriate actions. Two such public inquiries have been conducted, the Mackenzie Valley Pipeline Inquiry (MVPI) and the Alaska Highway Pipeline Inquiry (AHPI).

Federal Environmental Assessment Review Office

The Department of the Environment was formed in 1970, the same year that the Northern Inland Waters Act was promulgated, and under similar public demands. In addition, similar public demands were answered with the establishment of the Environmental Assessment and Review Process (EARP) in Canada during 1973. The EAR process is administered by the Federal Environmental Assessment Review Office (FEARO) under the direction of the minister of DOE.

Cabinet Decision - EARP

The Environmental Assessment and Review Process was established on December 20, 1973, by Cabinet Decision and revised by Cabinet on February 15, 1977. The Government Organization Act, 1979, outlines the role of the minister of DOE regarding EARP (Acts of the Parliament of Canada, 1979, p. 435).[7] Although responsible to the minister of DOE, EARP operates separately from any federal department, being conducted in an "arms length" fashion (FEARO, 1979c).

The EAR process is intended to ensure that the environmental effects of federal projects and activities are determined in advance such that decisions can be taken to avoid or mitigate negative environmental impacts (FEARO, 1979b). All federal departments and agencies are bound by the process with the exception of proprietary Crown corporations and federal regulatory agencies. The costs of EARP are shared by the federal government and the proponent. The EAR process may involve up to three sequential review stages, the first two of which (the environmental screening and the initial environmental evaluation) involve self-assessment by the federal agency initiating the project. Subsequent to this self-assessment, those projects deemed as having potentially significant environmental impacts are referred by the initiating department to the

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[7] During the life of EARP, the minister responsible has been charged with various ministerial responsibilities and appropriate departmental names. For convenience, these various names have not been used, only DOE.

minister of DOE for the third, more formal, stage of the review conducted by an EARP panel. The majority of federal projects and programs are approved during the first two review stages and proceed as planned, subject to normal regulatory processes that ensure environmental effects are mitigated. It is the small group of projects referred to FEARO that are of interest in this paper.

Once a project is referred to FEARO, a panel is established, with members appointed by the executive chairman of FEARO in the case of federal public servants and by the minister of DOE in the case of all others. The panel may consist of persons from government (federal, provincial and/or territorial) and the private sector. Panel members, with employer concurrence, sign an agreement stating they have not been nor will be involved in any other review of the project and they do not associate themselves with any position their employers may take on the projects (FEARO, undated). The panel reports to the minister of DOE direct, advising of their conclusions. This ensures the panel's independence and permits the public to comment to a body that reports directly to a Cabinet minister.

The panel usually, with public input, prepares and issues guidelines to the proponent for the preparation of an environmental impact statement (EIS). The proponent, using the guidelines, prepares an EIS, which is submitted to the panel through the initiating department. After the panel, technical agencies of governments and the public have all had sufficient time (30 days) to review the EIS, the panel conducts public meetings and hearings to provide an opportunity for the panel to hear the concerns and opinions of the public, primarily the local citizens, who may be affected by the project (FEARO, 1979b). To facilitate this, meetings and hearings are held in the communities most likely to be affected by the project. Generally speaking, an official record of the proceedings is maintained only for the technical hearings, not for the community meetings; recent exceptions include the joint NPA-FEARO hearings and the FEARO Norman Wells oil field and pipeline hearing (see Appendix 3).

Following the hearings, the panel prepares and submits a report to the minister of DOE containing the panel's conclusions and recommendations regarding the project's environmental acceptability. Decisions on the panel's recommendations are made by the minister of DOE and then by the minister(s) of the initiating department(s). Disagreement between ministers over these decisions would probably be referred to Cabinet for resolution (FEARO, 1979b).

While the EAR process is Canada-wide in scope, of the 30 projects which have been referred to FEARO, 12 involved northern Canada. The 12 projects (FEARO, 1980a) and the dates of their referrals to EARP are:

- Alaska Highway Gas Pipeline Project - Yukon Portion, March 1977;
- Arctic Pilot (LNG) Project, November 1977;

- Beaufort Sea Hydrocarbon Production, July 1980;
- Dempster Pipeline Project, January 1978;
- Eastern Arctic Offshore Drilling - North Davis Strait Project, August 1977;
- Eastern Arctic Offshore Drilling - South Davis Strait Project, August 1977;
- Lancaster Sound Offshore Drilling Project, August 1977;
- Mackenzie Delta Gas Gathering System, January 1975;
- Norman Wells Oil Field and Pipeline Project, February 1980;
- Polar Gas Pipeline Project, November 1975;
- Shakwak (Haines Road-Alaska Highway) Project, August 1974; and
- South Yukon Transportation Study, October 1976.

National Energy Board

Gray (1979, p. 118) describes the NEB as, being "born out of controversy." He goes on to explain that:

> When John Diefenbaker led the Tories into office in 1957, after 22 years of uninterrupted Liberal rule, it was in the wake of controversy over the previous government's handling of the Trans Canada Pipelines issue in Parliament, the financing of Westcoast Transmission, and the price of gas export sales to the United States.... The new government was anxious to avoid becoming trapped in the type of pipeline controversy that caught the Liberals and saw the establishment of an independent authority as a means of accomplishing this.

A royal commission on energy, the Borden Commission, was appointed to recommend the nature and extent of authority that should be extended to this independent authority (Stabback, 1975). The National Energy Board Act, establishing the NEB, was prepared using the findings of the Borden Commission and enacted in 1959 (Acts of the Parliament of Canada, 1979, p. 462).

The NEB participates in two major, and sometimes conflicting, roles namely, advisory and regulatory. Part II of the National Energy Board Act deals with the advisory role of the NEB, providing recommendations to the Minister of Energy, Mines and Resources (EMR) on Canadian energy matters. Parts III, IV and VI of the act deal with the regulatory role of the NEB: the issuing of certificates of public convenience and necessity for interprovincial and international pipelines and international power lines; regulations for pipeline safety and transportation charges; and authorizations for the export of oil, gas and electricity and the import of gas, respectively.

National Energy Board Act

Section 20 of the National Energy Board Act requires that applications for certificates of public convenience and necessity and for export licences be heard publicly. It also permits the NEB to conduct public hearings into other matters considered appropriate.

The NEB is composed of a group of nine board members who are appointed by the Governor in Council for renewable seven-year terms. Hearings on specific applications pursuant to Parts III, IV and VI, and for gathering information pursuant to Part II of the act, are normally conducted by a panel of three individuals, selected from the board members.[8]

Recommendations arising from a hearing under Part II of the act (Section 22.2) are reported to the minister of EMR (NEB, 1978). In the case of NEB approval of a certificate or licence under Parts III, IV and VI of the act, the NEB reports its recommendations to the Governor in Council through the minister of EMR. When the NEB does not approve a certificate or licence, the decision is not subject to Governor in Council review (Stabback, 1975).

Northern Pipeline Agency

On September 20, 1977, the Canada-United States agreement, governing the conditions applicable to the construction of the Alaska Highway gas pipeline, was signed (NPA, 1979b). To bring this agreement into effect, and on the basis of recommendations arising from numerous interventions before previous northern pipeline hearings, the Canadian government drafted legislation to establish a single agency to oversee the construction of the Alaska Highway gas pipeline.

Northern Pipeline Act

On April 12, 1978, the Northern Pipeline Act received royal assent authorizing the establishment of this single agency, called the Northern Pipeline Agency (NPA) (Acts of the Parliament of Canada, 1979, p. 466). The objectives of the act (given in Section 3), which include taking into account local interests, and the resulting commitments by the commissioner of the NPA resulted in two sets of public hearings being held by the NPA, the joint hearings with FEARO in the Yukon and in British Columbia. These hearings were intended to receive comment on the draft environmental and socio-economic terms and conditions prepared by the NPA regarding these two segments of the pipeline. The NPA portion of the joint panel for the Yukon hearings included representatives from the NPA,

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[8]Stabback (1975) notes that only one hearing has been conducted pursuant to Part IV of the National Energy Board Act.

DIAND and the Yukon territorial government according to their responsibilities in areas related to the pipeline. Comments presented at the Yukon hearings were considered by the NPA, while recommendations from the hearings in British Columbia were presented to the commissioner responsible for the NPA (Mair, 1980). The comments and recommendations from the hearings were considered in the final draft terms and conditions for Governor in Council approval. Only the Yukon hearings are discussed in this paper.

Northern Public Review Hearings

The public hearings that have been conducted and are currently planned in northern Canada are numerous and varied. The similarities of the completed public hearings conducted by the six federal bodies responsible for northern public review hearings are compared in Appendix 4. This appendix should be referred to for a more complete understanding of the proceedings and circumstance of these hearings.

The reasons for establishing the hearings, unique factors involved, and conclusions resulting from completed hearings are provided, as well as available information on impending hearings, according to the federal body responsible.

Canadian Radio-television and Telecommunications Commission

CBC Network Licence Renewal Hearing

Northern groups, notably ITC, have expressed continued concern over the nature and content of CBC programming in the north, emanating from and solely reflecting southern lifestyles (CRTC, 1979, p. 25).

Yet, as recently as 1977, northern residents wishing to comment at the CBC network renewal hearing would have had to travel to southern centres. Northerners did not attend these 1977 hearings and in 1978 the CRTC decided to include hearings in northern communities as part of the overall CBC network renewal hearings (CRTC, 1979).

The CRTC, in its April 1979 Decision, recommended that the CBC provide a minimum two hours daily of northern regional television programming that would reflect the linguistic make-up and cultural concerns of the resident population (CRTC, 1979).

Special Committee Hearing

The CRTC, following consultations with the Minister of Communications, formed a special committee in the fall of 1979 to investigate, in two phases, issues dealing with television service to remote areas, in the provinces and the territories. The first phase was to obtain public comment on the state of television service and the second was to conduct any necessary licencing hearing to improve this service (CRTC, 1980).

The hearing panel consisted of five CRTC commissioners and four individuals from various regions. All panel members were directed to represent their own regional interests and not those of the CRTC during the first phase of the hearing (CRTC, 1980).

In its July 24, 1980 report, the Special Committee recommended that the CRTC should call for licence applications to satisfy local regional needs and should encourage the federal government to arrange and pay for

interim Canadian programming, to be beamed by satellite to areas now receiving little or no television service, until new licences are issued (CRTC, 1980).

Bell Rate Increase Hearing

As on previous occasions, Bell Canada filed an application to increase its rates pursuant to the National Transportation Act with the CRTC in February 1978 (CRTC, 1979).

The CRTC decided, following suggestions from ITC, that northern hearings on the rate increase application should be held and that these hearings could occur in concert with the CBC broadcast licence renewal northern hearings (Bell Rate Increase Hearings, 1978, Vol. 1, p. 1-3).

Pursuant to Section 44 of the act, the CRTC approved funding for the Consumers' Association of Canada (CAC) to prepare materials prior to and/or expenses incurred while attending the rate hearing (J.G. Patenaude, personal communication).[9] Accordingly, the CAC attended all the rate hearings.

The CRTC concluded in its August 18, 1978 decision that services to northern communities must be upgraded to an acceptable level before any rate increases could be supplied (CRTC, 1978).

Canadian Transport Commission

Air Transport Committee Hearings

The Air Transport Committee (ATC) is the only modal committee of the CTC which, to date, has conducted hearings in the Yukon and the Northwest Territories. The ATC has conducted several sets of hearings in the north, with each set of hearings involving several applicants being heard.

A hearing panel usually consists of three commissioners of the ATC. When specifically directed by the ATC, however, a single ATC commissioner may hold a hearing. In some other cases, an officer of the commission appointed as an examiner may also inquire into matters falling within the terms of reference of his appointment.

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[9] The CRTC administers funds on the basis of an "intervenor" supplying specific information that the CRTC deems necessary for the hearings (J.G. Patenaude, personal communication).

Department of Indian Affairs and Northern Development

Water Management Hearings

Placer mining for gold is permitted under the Yukon Placer Mining Act (Acts of the Parliament of Canada, 1979, p. 495). The Yukon Water Board has conducted three separate sets of hearings to obtain industry and public comments on environmental guidelines for the placer mining industry, pursuant to Section 15(1) of the Northern Inland Waters Act.

The mining interests in the Yukon have opposed any such guidelines and, to date, none have been implemented.

Water Licence Hearings

Pursuant to Section 15(2) of the Northern Inland Waters Act, the water boards are required to conduct public hearings to review water-use licence applications, amendments or renewals. Since the act came into force in 1972, approximately 76 licences have been granted, 33 in the Yukon and 43 in the Northwest Territories.

The duration of water-use licence hearings is usually less than one day, generally involving local comment on a local proposal. These hearings, while numerous, have maintained a relatively low profile, nationally.[10]

Mackenzie Valley Pipeline Inquiry

Pursuant to Sections 4 and 19(f) of the Territorial Lands Act, and other relevant legislation, Canadian Arctic Gas Pipeline Limited commenced filing its application to construct a large diameter natural gas pipeline across the northern Yukon and up the Mackenzie River Valley with DIAND on March 21, 1974. The then Minister of Indian Affairs and Northern Development, the Honourable J. Chrétien, recommended to the Governor in Council that an inquiry into the proposed pipeline be conducted. Order in Council P.C. 1974-641 established the broadly mandated Mackenzie Valley Pipeline Inquiry (MVPI) on March 21, 1974, pursuant to Section 19(h) of the Territorial Lands Act (Berger, 1977b, appendix 2).

The then Minister of Indian Affairs and Northern Development the Honourable J. Buchanan, referred the competing Foothills Pipe Lines Ltd. proposal to construct a natural gas pipeline up the Mackenzie River Valley for consideration by the MVPI on July 4, 1975.

Following preliminary hearings in major centres in the Yukon and the Northwest Territories, Mr. Justice T.R. Berger, commissioner of the MVPI, issued preliminary rulings Part I and II, on July 12 and October 29,

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[10] Recent examples, such as the Arvik mine water-use licence, have involved national interest groups at the hearings and resulted in the hearings having a higher national profile.

1974, respectively (Berger, 1977b, appendix 2). He concluded in the Part I rulings that "I have been guided by the conviction that the Inquiry must be fair and it must be complete." This led to the Part II rulings, which outlined the scope and format of the hearings. The result of these precedent-setting rulings was that the MVPI conducted informal community hearings in 35 settlements in the Yukon and the Northwest Territories, formal technical hearings in major centres in the north and community hearings in 10 major centres across southern Canada.

The MVPI contributed $540 000 to qualified public interest groups for research and studies relating to the inquiry. In addition, DIAND contributed $1.2 million direct to native groups to facilitate their participation in the MVPI (MVPI, undated). Mr. Justice Berger's "fair and complete Inquiry" included 269 days of northern hearings and 19 days of southern hearings, making it the longest public hearing conducted in the north.

The inquiry issued its final report in two volumes. The first volume, released in April 1977, recommended to the minister of DIAND that no pipeline be permitted across the northern Yukon and that a Mackenzie Valley pipeline be postponed for two years to allow time for the settling of outstanding native claims (Berger, 1977a). The second volume, released in January 1978, contained the environmental and socio-economic terms and conditions that should be imposed for northern pipeline construction (Berger, 1977b).

Alaska Highway Pipeline Inquiry

The Commissioner of the MVPI (Berger 1977a, p. 49 and 50) noted that:

> an alternate route has been proposed across the southern Yukon, along the Alaska Highway...In my view, the construction of a pipeline along this route would not threaten any substantial populations of any species in the Yukon or in Alaska. But I am in no position to endorse such a route: an assessment of social and economic impact must still be made and native claims have not been settled.

The Canadian government decided, following the MVPI, to conduct an "in-depth" assessment of the Alaska Highway route prior to informing the United States government which of the three pipeline proposals it supported. American congressional deadlines required that the Canadian preference be provided by September 1, 1977, for consideration. In addition, DIAND had referred the Yukon portion of the project to FEARO. Such were the circumstances that saw the Honourable W. Allmand, then Minister of Indian Affairs and Northern Development, request and receive Cabinet agreement on April 7, 1977, to establish the Alaska Highway Pipeline Inquiry (AHPI) to examine in a preliminary manner the socio-economic implications, simultaneous with an EARP panel

investigating environmental implications, of the Yukon portion of the Alaska Highway Gas Pipeline Project (Lysyk et al., 1977). Canadian commitments to the United States government required that both reviews be completed by August 1, 1977.

The AHPI contributed $49 000 to qualified public interest groups and DIAND funded native groups with $140 000 to assist in their participation.

The AHPI recommended to the minister of DIAND, in its July 29, 1977 report, that the social and economic effects of the pipeline could be kept within acceptable limits provided certain conditions were met. It suggested that impacts and the project in general could best be controlled if a single planning and regulatory agency was created to oversee the project (Lysyk et al., 1977, p. 134). Considering its terms of reference, the AHPI also recommended that a subsequent inquiry should be conducted by the single agency to establish appropriate socio-economic terms and conditions (Lysyk et al., 1977, p. 138).

Federal Environmental Assessment Review Office

Alaska Highway Gas Pipeline Project Hearings

Interim Hearing

As indicated previously, Foothills Pipe Lines (Yukon) Ltd. applied to DIAND for a grant of interest in lands in the Yukon for a right-of-way to construct the proposed Alaska Highway gas pipeline on August 30, 1976, and the minister of DIAND referred that portion of the project traversing territorial land in the Yukon to FEARO on March 21, 1977. The normal EAR process had to be altered, however, since the Canadian government had agreed to provide the United States government with its decision on completing pipeline proposals traversing Canada by September 1, 1977 (FEARO, 1977). The federal government requested the panel's report by August 1, 1977, and the short lead-time made it necessary for the panel to review only the existing data; to seek public and professional opinion; to consider potential environmental impacts of the proposed pipeline; and to compare these impacts with those identified for a Mackenzie Valley route.

The panel concluded in its interim report to the minister of DOE, released on July 27, 1977, that a southern Yukon pipeline route was environmentally preferable to a Mackenzie Valley route for transporting Alaskan gas south. The panel recommended that, should the Alaska Highway route be approved, the regular EAR process be implemented to investigate fully the environmental implications of the project on the Yukon (FEARO, 1977).

Joint NPA-FEARO Hearing

A second phase of hearings, as recommended at the interim hearing, was held in April 1979 through a joint NPA-FEARO hearing. To avoid duplica-

tion, the FEARO portion of this hearing is described in this chapter under the section on the Northern Pipeline Agency - Federal Environmental Assessment Review Office.

Routing Alternatives, Whitehorse/Ibex Region Hearing

As indicated following the joint NPA-FEARO hearing the proponents commenced preparing a revised EIS. The first portion to be completed dealt with the Ibex Pass pipeline route and alternative routes in the Whitehorse area and was submitted to FEARO in March 1981.

The EARP panel, of similar composition as the two previous panels, conducted three days of technical hearings in Whitehorse. The panel concluded in its report to the minister of DOE, released in July 1981, that the proponents' preferred route be rejected in favour of a "West Whitehorse Cut-off" route (FEARO 1981).

Subsequent hearings remain to be held on other environmental issues identified at the joint NPA-FEARO hearings. These will be conducted as the appropriate portions of the EIS are revised and reviewed.

Shakwak Project Hearing

On February 11, 1977, the Canadian and United States governments concluded an agreement for the reconstruction and paving of the Haines Road and Alaska Highway from Haines, Alaska, through British Columbia and the Yukon Territory into Alaska; this is called the Shakwak Project. The Department of Public Works (DPW) referred the Canadian portions of the project (British Columbia and Yukon) to FEARO in July 1974 (FEARO, 1978c).

The panel concluded in its June 1978 report to the minister of DOE that there were no overriding environmental or social concerns that would prevent the project from proceeding as scheduled, provided potential social and ecological impacts would be mitigated by following procedures and conditions identified in the report. The panel also recommended to the minister of DOE that a study be undertaken to determine funding mechanisms and that the federal government establish a policy of funding public interest groups (FEARO, 1978c).

Eastern Arctic Offshore Drilling - South Davis Strait Project Hearing

A consortium of three companies (Imperial Oil Limited, Aquitaine Company of Canada Limited and Canada Cities Service Limited) applied to DIAND in the summer of 1976 to conduct exploratory offshore drilling in the southern Davis Strait. Late in 1976, DIAND initiated a program of integrated environmental studies, referred to as the Eastern Arctic Marine Environmental Studies (EAMES), for eastern Arctic offshore drilling proposals. DIAND referred the exploratory offshore drilling proposals to FEARO in the summer of 1977.

The panel adopted a regional approach for the entire southern Davis Strait area as opposed to a site-specific approach (FEARO, 1978d).

The panel recommended to the minister of DOE in its November 1, 1978 report that exploratory drilling proceed as proposed, under certain conditions outlined in the report. The panel also recommended (FEARO, 1978d, p. 44) that FEARO:

> should institute a follow-up mechanism to evaluate and report on the degree to which the Panel's conclusions and recommendations have been accepted and acted upon...(and) actively pursue the use of federal funding and other assistance for the public participation as intervenors in future panel projects.

The panel noted that in addition to a lack of funding, intervenors expressed concern over the narrow terms of reference of the panel; the inadequacies of consultation methods, timing, and procedures; and the lack of time permitted for Inuit communities to prepare for the hearings (FEARO, 1978d).

Lancaster Sound Offshore Drilling Project Hearing

The Norlands Petroleum proposal to drill one expendable exploratory test well in Lancaster Sound to a depth of 3 050 m in 770 m of water during 1979 was referred to FEARO by DIAND in March 1978, after the conditions of an approval-in-principle granted by DIAND to the proponent in 1974 were not met by the specified date of August 1977. DIAND requested that a regional approach be taken in the assessment.

The panel recommended to the minister of DOE in its report, released on February 12, 1979, that the proposed drilling be deferred until:

- DIAND has addressed the issue of the best uses of Lancaster Sound; and
- the proponent has demonstrated its ability to deal safely and effectively with the physical hazards in Lancaster Sound.

In addition government science programs in northern areas where development is proposed should be expanded. The panel also recommended that FEARO (1979a, p. 80) should:

- develop a mechanism for the provision of public funds to enable intervenors to prepare adequately for public hearings; and
- establish an appropriate mechanism to monitor the degree to which recommendations of the panel are accepted and implemented.

Arctic Pilot Project Hearing

The Arctic Pilot Project (APP), co-sponsored by Petro-Canada, Nova, Melville Shipping and Dome Petroleum, proposes to transport liquefied natural gas (LNG) throughout the year by Arctic Class 7 icebreaker tankers

from Melville Island to eastern seaboard markets. Application for necessary approvals to proceed with the APP were filed with DIAND, the NEB and the Department of Transport in January 1979.[11] DIAND and Petro-Canada jointly referred the project, including the pipeline on Melville Island, Northwest Territories, tankers, and LNG port facilities in eastern Canada, to FEARO in November 1977 (FEARO, 1980a).

DIAND recommended to FEARO that the panel should address both socio-economic and environmental concerns and recommended two socio-economic experts be appointed to the panel. These recommendations were accepted by the minister of DOE in order that DIAND's concerns could be addressed without the need for duplicating public hearings. DIAND provided ITC with $32 050 to assist Inuit participation at these hearings.

The panel recommended to the minister of DOE in its report released on November 6, 1980, that the Arctic Pilot Project as presented is environmentally acceptable provided certain conditions are met (FEARO, 1980d, p. 3). Hearings on the southern port facilities have been conducted by federal-provincial panels for the two proposed sites, at Gros Cacouna, Quebec, and Melford Point, Nova Scotia.

Norman Wells Oil Field and Pipeline Project Hearing

The project, co-sponsored by Esso Resources Canada Limited and Interprovincial Pipe Lines (NW) Ltd., proposes to expand production from the existing Norman Wells oil field in the Northwest Territories and to construct a small diameter pipeline up the Mackenzie Valley and into Alberta, to transport oil to southern refineries. DIAND referred the Alberta and the Northwest Territories portions of the project to FEARO in March 1980.

DIAND requested and received concurrence from FEARO to establish a hearing panel to deal with socio-economic as well as environmental concerns, both in the Northwest Territories and for native people residing in northern Alberta so as to discharge DIAND's and FEARO's responsibilities through one set of hearings. The minister of DIAND recommended to the minister of DOE the appointment of two socio-economic experts, one suggested by DIAND and one by the government of the Northwest Territories, neither of whom were public servants. The panel consisted of three environmental experts (public servants) and two socio-economic experts (non-government).

The hearings were held in August and September 1980, with two weeks of community hearings in the Northwest Territories, one week of technical hearings in Yellowknife, Northwest Territories, and a one-day community hearing in northern Alberta (FEARO, 1980c).

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[11] A new application was filed in October 1980 with Petro-Canada, Nova (formerly Alberta Gas Trunk Line), Melville Shipping and Dome Petroleum as sponsors of the project. The original application was sponsored by Petro-Canada and Alberta Gas Trunk Line.

The panel recommended to the minister of DOE in its report released January 22, 1981, that the project is acceptable provided it is delayed one year. This delay would permit the collection of needed information on the proponents' planning and government's preparedness for the project (FEARO, 1981a).

National Energy Board

Mackenzie Valley - Yukon Pipeline Hearing

Canadian Arctic Gas Pipeline Limited also filed material in support of its application to the NEB in respect of a certificate of public convenience and necessity in March 1974, and January, March and May 1975. Foothills Pipe Lines Ltd. filed material for its Mackenzie Valley gas pipeline (Maple Leaf Project) in March, April and May 1975. Foothills Pipe Lines (Yukon) Ltd. filed material for its Alaska Highway gas pipeline in September 1976 and February 1977 (NEB, 1977).

In April 1975 the NEB appointed a three-member panel to hear the applications commencing in the fall of 1975. A possible bias of the panel chairman resulted, however, in a new three-member panel being appointed in March 1976 (Gray, 1979).

The NEB granted a conditional certificate for the Alaska Highway gas pipeline, in its report issued on July 4, 1977 (NEB, 1977).

Arctic Pilot Project

In the fall of 1979, the minister of DIAND requested that the minister of EMR direct the NEB to review the northern components of the APP, respecting public convenience and necessity of the proposed facilities, pursuant to Part II of the National Energy Board Act. This was agreed to in the winter of 1980. In addition, since the APP proposes to export Canadian natural gas to the United States and has applied to the NEB for an export licence, the NEB must conduct hearings on applications made under Part VI of the National Energy Board Act.

The NEB has tentatively scheduled its hearings on the APP for late in 1981.

Norman Wells Pipeline Project Hearing

Interprovincial Pipe Lines (NW) Ltd. filed an application for a certificate of public convenience and necessity and a tariff order, pursuant to Parts III and IV of the National Energy Board Act, with the NEB on March 17, 1980. The NEB conducted hearings in Edmonton, Yellowknife and Ottawa during October and November 1980 (NEB, 1980). Motions by the Dene Nation and the Committee for Justice and Liberty, that all the hearings should be conducted in the Northwest Territories where the impacts would occur, and that the NEB should not consider the application because of the govern

ments one-third interest in the Norman Wells oil field and the unresolved native claims issue, respectively, were turned down by the NEB panel (NEB, 1980, Vol. II, p. 75-78).

The NEB granted a conditional certificate for the Norman Wells oil pipeline in its report issued on April 22, 1981 (NEB, 1981).

Northern Pipeline Agency-Federal Environmental Assessment Review Office

Joint NPA-FEARO Alaska Highway Gas Pipeline Project Hearing

Following the September 9, 1977 agreement between Canada and the United States, authorizing the construction of the Alaska Highway gas pipeline, FEARO issued guidelines for the preparation of an environmental impact statement (EIS) in December 1977 (FEARO, 1979b). The role of initiator for the project was transferred from DIAND to the NPA late in 1978.

Following public consultations, the NPA prepared initial drafts of the proposed socio-economic and environmental terms and conditions for the Yukon portion of the Alaska Highway gas pipeline on May 10, 1978 (NPA, 1979a). The NPA consulted extensively with government departments (federal and territorial) and public interest groups on these drafts, which led to the release of a second draft of the socio-economic terms and conditions on October 26, 1978 and the environmental terms and conditions on February 16, 1979 (NPA, 1979b). Prior to the release of the Draft II environmental terms and conditions, the NPA and FEARO announced they would be conducting a joint set of hearings in the Yukon to receive public comment on the Draft II terms and conditions, the EIS prepared by the proponent and any other related matters. The joint hearing was established to reduce duplication of effort by the NPA and FEARO and to allow the public to make presentations to only one set of hearings. The NPA decided that the Yukon's interests would be best met if the NPA portion of the joint hearings panel consisted of representatives from DIAND, the Yukon territorial government and the NPA who were familiar with the Yukon. The individuals nominated were appointed by the NPA to the socio-economic portion of the joint panel. The environmental portion of the joint panel had a membership similar to that for the FEARO interim hearing.

At the technical hearings in Whitehorse, three evenings were dedicated to the draft terms and conditions, while the remainder was devoted to the EIS. Frequent comments regarding the lack of funding prohibiting full interventions before the hearings were made at both community and technical hearings (Yukon Public Hearings Transcripts, 1979). Public turnout at the hearings was small due to an apparently developing apathy of Yukon residents to public hearings, including NEB, MVPI, AHPI and FEARO hearings (Sawatsky, 1979). The CYI boycotted these hearings to emphasize its position that land claims must be settled prior to pipeline construction. Several environmental groups (Yukon

Conservation Society, Sierra Club, and Canadian Arctic Resources Committee) indicated their reservations about participating in these hearings since everything had already been said before, at the MVPI, the AHPI and the interim FEARO Alaska Highway gas pipeline hearings, yet no action had been evident.

The NPA portion of the joint hearing panel did not produce a report based on the hearings; the hearing transcripts represented its report. The local comments recorded in the official transcripts were used internally by the NPA for the preparation of the terms and conditions. The small turnout at the public hearings resulted in little comment and few, minor changes to the draft terms and conditions. The completed drafts of the socio-economic and environmental terms and conditions for the Yukon section of the Alaska Highway Gas Pipeline Project are slated for Governor in Council approval in 1981.

The EARP panel concluded in its August 1979 report to the Minister of DOE that its review of the Yukon segment of the Alaska Highway gas pipeline could not be completed because important information on engineering design as well as on environmental and natural resource issues was lacking. The panel recommended to the minister of DOE that the proponent prepare a revised EIS, taking into account shortcomings noted by the panel, at which time the panel would reconvene to complete its review of the project (FEARO, 1979c).

Developments in Northern Public Review Hearings

The foregoing chronicles the sporadic, seemingly inconsistent, development of public review hearings in northern Canada during the past decade. While there have been approximately 100 public review hearings conducted in the territories, only 13 have been regulatory in nature and, of the remaining advisory hearings, only 11 were not conducted by the territorial water boards. Nonetheless, given the routine nature of the water board hearings (Drury, 1980), it is the regulatory and other advisory ones that are of most use in ascertaining developing trends in northern public review hearings.

Generally speaking, public review hearings have resulted in the approval of proposals subject to specific conditions based on concerns expressed during the course of the hearings. Notable exceptions include the NEB Mackenzie Valley-Yukon gas pipeline hearings, the MVPI, the FEARO Lancaster Sound drilling hearings and water-use licence hearings. Other visible results from public review hearings have included the establishment of institutions, such as the Northern Pipeline Agency, and exercises, such as EAMES and the Lancaster Sound Regional Study, to address the concerns and suggestions presented at hearings. On the other hand, public review hearings have caused delays in proposed project timetables and resulted in major expenditures by participants: governments, applicants and intervenors.

A more specific assessment of developing trends requires a detailed analysis and comparison of selected components of northern public review hearings. The fundamental differences between regulatory and advisory hearings require that these two basic types be assessed separately. There are, however, sufficient similarities to permit comparison of the development of these two types of northern public review hearings.

Establishing Hearings

Circumstances for establishing regulatory hearings are clearly defined in legislation. This legislation, which requires applications to government agencies for regulatory approvals, contains built-in conditions for establishing public hearings.

The establishment of advisory hearings is done under the authority of responsible minister(s), using a variety of procedures that includes the following:

- legislation indicates when hearings should be established, as in the case of the Northern Inland Waters Act;
- legislation indicates when the alternative exists for establishing hearings, as indicated in the Territorial Lands Act;
- legislation may, by its objectives, be interpreted as being best realized through the establishment of public hearings, as in the Northern Pipeline Act; or

- legislation may not exist in which case Cabinet directives provide the necessary authority, as used for EARP.

Hearings may also be established by government agencies, of their own motion, as does the CRTC under Section 19(3) of the Broadcasting Act.

The NEB and CTC have conducted regulatory hearings; the CRTC has conducted both regulatory and advisory hearings; and DIAND, FEARO and the NPA have sponsored advisory hearings. There remain unexercised prerogatives for the operation of regulatory and advisory hearings in northern Canada by the CRTC, CTC, DIAND and the NEB.[12] It is not totally inconceivable that the NPA, in the course of monitoring the short- and long-term effects of the Alaska Highway gas pipeline, might conduct public review hearings in the Yukon to assist in assessing the effectiveness of the monitoring program. There also remains the possibility of enacting new legislation containing provisions for public review hearings in the north, such as legislation for EARP.

The decision to establish public hearings, both regulatory and advisory, remains the responsibility of government. Generally speaking, the impetus to establish hearings has been derived from specific industry applications and public demands to government, in reaction to specific proposals. A notable exception is the recent referral of Beaufort Sea hydrocarbon production to FEARO, prior to any specific detailed application from industry for necessary government approvals. This exception could represent the establishment of hearings as part of a planning effort by government[13] - a new use of northern public review hearings.

The use of public review hearings is controlled by government, which presents the very real potential for improper use of hearings by government. Public interest groups have expressed concern in this regard, particularly in reference to EARP (Edmond, 1978; Rees, 1979; Canadian Environmental Advisory Council, 1979). These and other concerns have prompted FEARO to draft legislation to enshrine the principles of the process in law. Regardless of legislation, there remains this potential for the misuse of public review hearings (Stabler and Olfert, 1980), which government is resonsible for controlling.

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[12] The powers of the CRTC to hold hearings have not been fully exercised in northern Canada. Other CTC committees possess the as yet unexercised prerogative to conduct hearings in northern Canada. The Oil and Gas Production and Conservation Act (Section 8.2) affords DIAND the responsibility of conducting hearings. NEB-APP hearings will operate in the north pursuant to Part II of the National Energy Board Act.

[13] E.R. Weick (undated) suggests that with the scale of future northern development, the government needs a positive and active strategy of advance planning, termed pro-active response, instead of a reactive response. Concerns regarding the lack of planning have been voiced by residents, interest groups and government for the last two decades.

Hearing Mandates

The mandate for regulatory hearings is generally indicated in the enabling legislation and associated regulations. Advisory hearings, however, have tended to be given loosely defined mandates which may be variously interpreted.[14] Loosely defined mandates afford the hearings panel great flexibility to deal with issues arising during the public review. On the other hand, such mandates effectively transfer responsibility from the responsible minister(s), who oversees the drafting of the panel's terms of reference, to the members appointed to preside over the hearings.

The scope of regulatory hearings tends to be national, while advisory hearings are usually local. Accordingly, the advisory hearings are centred in the north and the regulatory hearings in the south.

There have been six separate hearings dealing with the Mackenzie Valley-Yukon pipeline proposals, one regulatory hearing and four advisory hearings, namely, the NEB hearing, the MVPI, the AHPI, the FEARO interim and routing alternatives hearings and the joint NPA-FEARO Alaska Highway gas pipeline hearing. The mandates of these various hearings was such that substantial subject overlap occurred particularly in the area of socio-economic and environmental concerns resulting in the different hearing panels duplicating efforts.[15] This duplication is costly, in terms of time and effort of all participants, and generally detracts from perceptions regarding their effectiveness, leading to public apathy toward the hearings.[16]

It must also be realized that as indicated by the Alaska Highway gas pipeline case, the time frame for various types of decisions may be such that hearings are warranted at various stages of the project, namely the government decision rejecting the Mackenzie Valley gas pipeline proposal and supporting the Alaska Highway gas pipeline (NEB and MVPI), government approval of the Alaska Highway gas pipeline (FEARO and AHPI) and the preparation of terms and conditions governing the construction and operation of the pipeline. The general public does not appear to understand or acknowledge these different stages, which may lead to confusion and an apathy toward public hearings.

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[14]The mandate for the MVPI was loosely interpreted by the commissioner, resulting in the broad ranging Inquiry (Beakhust, 1977; Stabler and Olfert, 1980).

[15]Overlap of hearing mandates is not surprising considering the overlap in socio-economic, environmental and technical subject matter of guidelines issued by NEB (NEB, 1979b), DIAND (Government of Canada, 1972) and FEARO (FEARO, 1979a).

[16]Sawatsky (1979) comments on the lack of public interest in the NPA-FEARO hearing.

The Environmental Protection Board (1973) suggested that one set of hearings should be sufficient for assessing the impact of most northern projects. While no differentiation was made between regulatory and advisory hearings, CARC (1979) and Weick (1979) suggest that single hearings should address social, economic and environmental issues on an equal basis, using a regional approach to impact assessment.

Recent EARP hearings for the APP and Norman Wells Project represent a move by DIAND and FEARO to develop a suitable mechanism to incorporate various responsibilities into one rather than several hearings. EARP panels have been including socio-economic concerns on their mandates, unofficially, and DIAND's recent moves have legitimized environmental panels addressing these concerns and elevated these to an equal status with environmental concerns.

While various advisory public reviews have moved toward amalgamating their mandates through a joint hearing, no such move has occurred to reduce the overlap or to amalgamate regulatory with advisory hearings.

Hearing Panels

The people who preside over regulatory hearings are selected from the staff of the responsible agency. Thus far this staff does not include northern residents; the panels therefore do not contain any "local" people. Board members, in the case of the NEB, and commissioners, in the case of the CRTC and the CTC, form the hearing panels.

The size and make-up of hearing panels for advisory hearings is decided upon by the responsible minister(s), the notable exception being the appointment of federal government personnel to EARP panels by the executive chairman of FEARO. The responsible minister(s) potentially affects the outcome of the hearings through the selection of the individuals to preside over the hearings. It is through the panel selection that the responsible minister(s) may influence or direct the nature and outcome of the hearings while transferring responsibility for the result of the hearings to the hearing panel. Since someone must decide, it is preferable the ministers, accountable to the public, make the final selection.

Advisory hearing panels have consisted primarily of government employees, many of whom are federal employees. The Yukon territorial government has been represented on most panels conducting hearings in the Yukon, while only recently have public servant from the Northwest Territories government been appointed to EARP panels. Only three hearing panels have included native representatives, the AHPI, the CRTC Special Committee and the EARP Norman Wells Project hearings, while the MVPI, the AHPI, water boards, CRTC Special Committee and the EARP Norman Wells Project hearings have included non-government personnel.

FEARO has the authority to appoint private citizens as well as government personnel to hearing panels (FEARO, 1978b), and this option was exercised in the Norman Wells Project hearings. In its attempts to provide fuller, more responsive panels, FEARO has increasingly used the expertise of non-government personnel. This is the case with all EARP panels, in both northern and southern Canada, and as such is not a function of conditions peculiar to the north. Two trends are emerging in panel memberships, the increasing use of "more credible" non-government panel members and, in the Northwest Territories, an increasing territorial government involvement in hearing panels, approaching the Yukon government participation levels.[17] There is no apparent concerted movement toward increasing native involvement on hearing panels, although the FEARO Norman Wells oil field and pipeline hearing panel and the recently announced FEARO Beaufort Sea production panel include native panel members.

Public Access to Hearings

Access to hearings is more of an immediate concern to the general public and interest groups than to government or industry. Government can effectively control public access through a variety of methods: by deciding on the location and duration of hearings; by establishing the time periods for information exchange and assessment; by providing some direction as to the content and format of this information; and by deciding who should receive financial assistance and to what amount. Industry generally has the resources to ensure that its position is made evident to the public and the government. Industry can control access to information as can public interest groups. When discussing access, physical, temporal, financial and information aspects need to be considered.

Regulatory hearings are generally national in scope and only recently have included regional hearings. The majority of CRTC and CTC regulatory hearings, are, however, regional and even local rather than national in scope. The financial commitment necessary to permit full participation at regulatory hearings is normally beyond the means of individuals and interest groups, particularly those that do not involve local hearings. Rules of procedure might further limit interventions, but this is not a paramount concern; participation cannot occur without the financial means to do so (Beakhust, 1977; Estrin, 1977; Aron, 1979). The CRTC has awarded costs to the Consumers' Association of Canada (CAC) to intervene at Bell rate increase hearings, under its empowering legislation. DIAND

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[17] The fact that panel members are not government employees lessens the concern of a potential conflict of interest in panel members and reduces the potential for bureaucratizing the hearing results (Rees 1979).

provided funds to ITC for intervening at the NEB gas supply and demand hearings and to the Dene to intervene at the NEB Norman Wells Pipeline Project hearings since the NEB does not normally fund intervenors.

Advisory hearings are, by design, generally more accessible to the public. In the physical sense, access to these hearings has been improved with community hearings, where the hearings travel to the people.[18]

In the temporal sense, community hearings afford each settlement sufficient time to voice their opinions on home ground.

Procedurally, hearings have become less formal in nature, thereby reducing some of the intimidating features associated with intervening, such as cross-examination. In terms of financial access, there appear to be two schools of opinion found both in participants and in sponsors of hearings. On the one hand, it is thought that the improved access afforded through less formal regional hearings is sufficient and that financial assistance would further prolong hearings without significant benefit. On the other hand, it is thought that groups having an interest in the area and having something worthwhile to contribute to the proceeding should receive funding to defray costs associated with intervening and/or to permit prehearing research into those areas for which they possess certain expertise. Such funding has been provided by the MVPI and the AHPI and will be made available by DIAND for the FEARO Beaufort Sea and the NEB Arctic Pilot Project hearings. In these three instances, final approval of funding remained with the government through the responsible minister(s) and Treasury Board.

There has recently been increased intervenor funding provided by the United States government (Paglin and Shor, 1977; Aron, 1979). McIntosh (1977) notes that costs for public participation, including those associated with physical and financial access, while substantial, are frequently accompanied by otherwise unknown financial benefits, including public education, better decision-making, and public acceptance of projects (Estrin, 1977, p. 87; Aron, 1979, p. 479 and 480; Sadler, 1979, p. 10 and 11).

In terms of information flow, there are essentially two problems which arise: the transfer of information among participants at such a late date as to make it effectively inavailable, and linguistic barriers. The intended purpose of hearings is to obtain public comment, which necessitates industry and government providing their view to the public prior to the hearings and explaining these views during the course of the hearings so the public may participate in a knowledgeable manner. This issue then extends beyond the strict confines of public hearings into the broader realm of on-going public consultation by both government and industry

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[18]This concept was used most extensively by the MVPI and formed the keystone to the hearings (Beakhust, 1977; Lucas and Peterson, 1978; Weick, undated).

(Mair, 1980, p. 18 and 19). Nonetheless, comments by the public that insufficient time has been provided to review the appropriate information are common (FEARO, 1978c, 1980b; Emond, 1978; Rees, 1979). The variety of languages and dialects encountered in the territories further compounds this situation. In addition, as evidenced at the joint NPA-FEARO hearings, problems arise wherein information flow between government and industry has been less than satisfactory (FEARO, 1979c). These all reduce the value and effectiveness of public hearings and/or may prolong the hearings while generating negative feelings for and among all participants.

Participation

The quality and quantity of interventions at hearings is a function of accessibility, which in large measure is controlled by government. Assuming access is readily available, interventions are then controlled by other factors, including whether or not the intervention is worth the effort. Both territorial governments intervened before northern regulatory hearings, while only the Yukon territorial government has consistently intervened at advisory technical hearings. The government of the Northwest Terrritories intervened at the MVPI, but only in the last phase of the hearings. More recently, the Northwest Territories government has displayed an increased interest as evidenced by their participation at EARP hearings. This suggests that the territorial governments see a certain value and legitimacy in public reviews and/or are interested in developing the necessary expertise so as to prepare themselves for the time when they might conduct their own hearings.[19]

Industry has little choice regarding its participation in public hearings. The regulatory hearings require the proponents to justify their proposals, while participation at the advisory hearings has developed out of corporate conscience and public relations associated with availing themselves of the opportunity to respond to questions about the project.

Public response to hearings has been varied, but generally positive in nature as indicated by continued public participation at hearings. Some interest groups, however, appear to be reluctant to participate at hearings as evidenced at the joint NPA-FEARO hearing, where the CYI boycotted the hearings, other interest groups commented on the lack of action from previous hearings (Yukon Public Hearings, 1979), and general public apathy resulted in a very small public participation rate; and the FEARO Norman Wells oil field and pipeline hearings, where the Dene and CARC did not participate, saving their efforts for the NEB regulatory hearings. The greatest participation has occurred at the advisory community hearings.

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[19]Comments by the Honourable G. Braden (FEARO, 1980b, Vol. 2, p. 82, 1980c, Vol. 10, p. 713-714) suggest that the Northwest Territories government is moving in this direction.

The reasons behind public participation are varied but the results from intervening appear to be generally positive. An analysis of this, however, is beyond the scope of the paper.

Hearing Results

Regulatory hearings conclude with the approval or rejection of the proposed development. These rulings are not subject to general debate.

Advisory hearings conclude with recommendations being forwarded to the responsible minister(s). Subsequent decisions by the minister(s), in consultation with Cabinet, are subject to public scrutiny and comment through the established channels of communication between the electorate and Parliament. These recommendations are frequently expressed indirectly through shifts in government policy, but such alterations may not be readily apparent. The hearing panel does not directly decide on the approval or rejection of a proposal; they advise the responsible minister(s) of options and measures that should be considered. Public participation and requests for hearings imply a degree of approval of hearing results.

Another major result of the hearings relates to northern public review itself. Frequently, panels make recommendations that reflect upon the operation and format of the hearings (FEARO 1978c, 1978d, 1979a). These recommendations have been expressed in the continued evolution of hearings procedures and types as the hearings are revised to be more responsive to the needs of the participating public.

Inter- and Intra-governmental Relations

The federal and territorial governments share provincial-type responsibilities and it is this intergovernmental sharing of responsibilities in which conflict develops.

The hearings conducted by the NPA, the NEB, the CTC, and the CRTC do not suffer from this conflict since they presently operate clearly and strictly in the legislated domain of federal responsibilities; it is the DIAND- and FEARO-sponsored hearings that are the centres of conflict.

Both the Yukon and the Northwest Territories are moving toward more responsible government, which some hope will eventually lead to provincial status. It is generally acknowledged that the Yukon is further advanced than the Northwest Territories, having had a fully elected legislative assembly for a longer period. Nonetheless, both governments hold similar concerns regarding federally controlled provincial-type jurisdictions. Drury (1980, p. 79-81) describes these concerns in the Northwest Territories, which are similar in the Yukon, as follows:

> The federal exercise of jurisdiction in regulating inland water use in the NWT (as carried out by the Minister of DIAND pursuant to the Northern Inland Water Act) is also frequently criticized as being insensitive to territorial interests. In the provinces, regulation of water use is carried out by the provincial governments.... The present process (Water Board Hearings) provides opportunity for territorial residents to participate in the deliberations and to influence their outcome. Nevertheless, because decisions are made at the federal level, territorial interest groups concentrate their efforts on influencing the Minister (of DIAND).

and

> The GNWT's present ability to take action is again constrained by the substantial federal presence.... The federal process (EARP) is causing concern on a number of fronts in the NWT. There is uncertainty because of the wide discretion permitted each panel regarding, for example, the form of public consultations. A GNWT assessment process would to a large extent, be redundant, given the presence of the existing federal process.... The potential for conflict of interest is great....

Further complicating this issue are intragovernmental conflicts as evidenced by DIAND, FEARO and the NEB issuing guidelines, for use by their respective hearing processes, that deal with the social, economic and environmental impacts associated with large-scale development.[20] These guidelines establish the potential for interdepartmental jurisdictional conflicts. As Weick (1979) notes, impacts arising from large-scale projects in northern Canada will unavoidably affect the human and physical environment and impact assessments must simultaneously consider both. While it is necessary to adopt this approach to impact assessment, it is poor management to conduct more than one set of hearings that substantially duplicate each other. The regulatory NEB hearings are effectively separate from the advisory hearings sponsored by DIAND and FEARO, although duplication occurs between these types of hearings. With the advisory hearings, DIAND is charged with responsibility for protecting and managing the human and physical environment in northern Canada, while FEARO, through its reporting to the minister of DOE, is charged with a Canada-wide responsibility for protecting the physical environment.

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[20] See DIAND (Government of Canada, 1972), FEARO (FEARO, 1978a) and NEB (NEB, 1979b) guidelines.

The two most recent EARP hearings, for the APP and Norman Wells Project, have demonstrated a new approach toward consolidating advisory hearings. In both instances, DIAND has specifically requested that EARP review socio-economic concerns in addition to environmental ones and has recommended socio-economic experts for the hearings panel.

Both the APP and Norman Wells Project EARP hearings preceded any regulatory hearings, recommending on the environmental acceptability of the projects prior to the acceptance or rejection of the proposal by regulatory bodies, that is to say, the NEB. In this manner, while operating in a "policy vacuum" (Stabler and Olfert, 1980), the advisory hearings generate information that may be incorporated into the policy/regulatory decisions.

Native Claims

The development of northern public review hearings should be considered in relation to the native claims situation. Drury (1980, p. 22 and 23) summarizes this situation.

> Since 1973 the process for negotiation of claims has involved, on the one side, the native claimants through their organizations established for this purpose with the help of the federal government, and on the other side, the federal government which has been represented through the Office of Native Claims under the direction of the Minister of Indian Affairs and Northern Development....[21] The goal of native claims should be the protection and promotion of native economic and cultural interests (which traditionally are land based). With regard to native political concerns, the objectives and terms of the governments with the native peoples, while negotiated collectively, should not be incompatible with the individual interests of both native and non-native peoples in the evolution of public government. The implementation of claims agreements and the development of more responsible government... can be expected to require time and difficult negotiation... (and) progress simultaneously.

The uncertainty caused by the lack of resolution of native claims and by constitutional development permeates all northern activities, particularily government and industry planning. An impact has also been felt

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[21] The Yukon territorial government was included in negotiation talks by DIAND in October 1979.

on public review hearings, affecting both the quality and the quantity of public participation. Extensive portions of the public hearings have been occupied by comments on native claims, at the cost of limiting time and interest in commenting on other issues, within the mandate of the hearings panel, dealing with the proposed development. Solidarity within native groups arising from the native claims situation can, on the other hand, result in a general reduction in public participation and specific comment on the project for which the hearings have been established. The NPA-FEARO hearings were boycotted by the CYI such that concerns of Indian bands were not heard by the hearing panel.[22] The FEARO Norman Wells Project hearings witnessed a single presentation, focussing on land claims, by the band chiefs in Fort Franklin, Wrigley and Fort Rae (FEARO, 1980c), while other band members present at the hearings did not speak.

Until some progress in the settling of native claims occurs, native groups will continue to utilize available public forums, including public review hearings, to press their case. In the meantime, the potential of northern public review hearings will be limited by land claim issues using up time.

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[22]The Champagne-Aishihik band from Haines Junction, Yukon Territory, did not accept the CYI boycott and participated in the hearings (Yukon Public Hearings, 1979).

Conclusions

The government has repeatedly and increasingly employed public review hearings, on an ad hoc basis, in northern Canada during the past decade. This has been the case with both regulatory and advisory hearings.

Regulatory Hearings

The role, format and future of regulatory hearings is firmly established in law. There appears an emerging trend that, for those hearings dealing with issues affecting northern areas, government efforts will continue to contact these areas directly through northern hearings. This contact will assist regulatory bodies in developing a better understanding of the northern situation and relate this to national considerations. Increased northern regulatory hearings represent a move toward government decision-making that is more responsive to northerners. Regardless of land claims and devolution considerations, these regulatory hearings will remain in the jurisdictional domain of the federal government,[23] although increased local government participation at these hearings should be expected and encouraged.[24]

Advisory Hearings

Advisory hearings present a very different picture from regulatory hearings. Strong precedents have been established and public demand for the use of advisory hearings continues, although the role and form of these hearings are subject to considerable change.

Government indisputably controls advisory northern public review hearings, but these controls are exercised in a different manner to regulatory hearings. Providing EARP with a legislative mandate would increase its authority but reduce its flexibility. The scope of this mandate, environmental and/or socio-economic, will have major implications for future local government involvement in and/or sponsorship of public review hearings as well as for other federal public review hearings. Development of such legislation is in the very early stages.

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[23] Federal-provincial constitutional patriation talks have included discussion of transferring control of communications to provincial jurisdictions, although no agreement has, as yet, been reached.

[24] The term local government is intended to include territorial, provincial and/or native government, whichever is appropriate.

Government has employed hearings in a reactive manner, responding to industry and public initiatives. Only the CRTC hearings, the Yukon Territory Water Board placer mining guideline hearings and the future FEARO Beaufort Sea production hearings have been developed in the absence of specific industry applications to government. These hearings present possible indications the government is using northern public review hearings as an anticipatory planning tool. Undoubtedly, hearings will continue to be used by government in a reactive manner, as well.

The levels of government operating these hearings will depend on the outcome of land claims negotiations and devolution. Federally sponsored hearings conducted by the CRTC, the CTC, FEARO and the NEB will continue. The NPA is designed to cease operation one year following completion of the pipeline, thus precluding continued hearings. DIAND-sponsored hearings may eventually become the responsibility of the local governments. The territorial governments have displayed an increasing interest in public review hearings and can be expected to attempt conducting their own hearings in the near future.

The potential for conflict between hearing sponsors and hearing mandates will continue, and efforts will be required to avoid unnecessary duplication.[25] Increasingly, socio-economic and environmental concerns are being considered inextricably linked and as equals. This suggests that public hearing mandates will include both these concerns, traditionally separated by government and academics, with balanced consideration. To accomplish this, panel memberships will have to include experts to deal with these concerns. There has recently been an increased reliance on nongovernment "northern experts" for panel membership and this trend can be expected to continue. In this regard it would be reasonable to assume greater participation of northern residents on hearing panels, although no indication of native participation is apparent except for the AHPI, CRTC Special Committee and EARP Norman Wells Project hearings[26] and the recently appointed EARP Beaufort Sea production panel.

The value of community and technical hearings is well established and they should continue to be used in northern public review hearings.

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[25]The CRTC and CTC hearings do not enter into conflict with other northern public review hearings since these hearings focus on communications and licencing commercial carriers. It is the DIAND, FEARO, NEB and NPA hearings, all of which deal with northern hydrocarbon transportation proposals, where concerns of duplication arise.

[26]A problem may arise for a local person participating on panels where, subject to panel recommendations and government actions, that individual may be placed in the untenable position of becoming the focal point of community criticisms regarding the outcome.

The degree of informality at the community hearings must be balanced with maintaining credibility and public access. In addition, since hearings should not duplicate other less formal public consultation mechanisms, transcripts of all the hearing proceedings should be maintained. This would require simultaneous translation at the hearings; though expensive, this improves information flow at the hearings.

Theoretically, the purpose for conducting public review hearings is to provide government, the public and industry access to information (gathering, evaluation and dissemination). To optimize public access, information from the proponent and government should be supplied in sufficient time and in form acceptable to the intended recipients. Interest groups frequently possess the experience and interest to provide valuable input to the hearings, but lack the resources to properly prepare or participate. Since the purpose of hearings is to obtain "expert information," there are some circumstances in which government financial support should be considered to assist local "expert" interest groups to prepare information of value to the hearings panel. To be cost effective, fairly rigid, precise funding criteria should be developed and mechanisms established, peripheral to the hearings themselves, to ensure funds are provided in a timely manner and expenditures are fully justified and accounted for.

Future Hearings

Looking forward to the role of public review hearings in northern Canada, several distinct trends can be extrapolated. Regulatory hearings have increasingly been conducted in the "impact" area and this developing trend may be expected to continue. The actual number of regulatory hearings being conducted in the north will, however, remain dependent on and be somewhat indicative of the level of major industry activity in the north. Advisory hearings, on the other hand, will be increasingly used in northern Canada, particularly if the territorial governments establish their own public review hearing processes. In addition to the conventional use of advisory hearings, namely to collect local comment on the potential impacts of a proposed development for input into the decision-making process, advisory hearings could be used to gather information on a proposed project to permit government planning before application for project approval from industry and possibly to collect information on the effectiveness of the mitigative measures adopted in the implementation of a project and the local effects of the project. Included in this scenario is the real risk that an increase in public review hearings beyond an undefined point could destroy the value of public review hearings as input to northern decision-making.

Public review hearings, both regulatory and advisory, constitute an important aspect of the government's public consultation process in

northern Canada. As such, the effectiveness of hearings relies on and is indicative of the overall effectiveness of this public consultation process. Within the relatively narrow confines of the public review hearing aspect of this consultation process, there are a number of measures that government(s) must establish and maintain to optimally utilize public review hearings.

The continued and developing use of public review hearings in the decision-making process rests on the following measures. The hearings must consider and respond to participant needs and be sufficiently flexible so as to accommodate the various circumstances that may arise in the north. The perceived government control over and directing of hearings should be altered such that signs of arbitrariness are reduced while versatility and accountability are maintained. Access to the hearings should be responsibly encouraged by government to ensure that residents are provided the means to effectively participate in hearings, including physical, financial, temporal, procedural and information accessibility. Procedures for monitoring the effectiveness of the hearings as part of the consultation process and, in the case of advisory hearings, the accountability of responsible politicians and public servants, should be developed to ensure that the credibility of public review hearings is maintained.

Finally, since public review hearings are part of the consultation process, an effective dialogue between the government, public and industry is needed. This requires efforts from the public and industry as well to make the best use of public review hearings.

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Appendix 1

Northern Public Review Hearings

Federal Body Responsible for Hearings	Authority for Establishing Hearings*	Reason for Hearings	Number of Hearings
Canadian Radio-television and Telecommunications Commission	Broadcasting Act - Section 19	Broadcast licence application, amendment or renewal	1
	- Section 19(3)	Special committee (issue)	1
	National Transportation Act - Section 45	Telecommunication carrier rate increase application	1
Canadian Transport Commission	National Transportation Act - Section 45	Air carrier licence application, amendment or renewal and tariffs and tolls	8
Department of Indian Affairs and Northern Development	Northern Inland Waters Act - Section 15(1)	Water management	3
	- Section 15(2)	Water licence application. amendment or renewal	80
	Territorial Lands Act - Section 19(h)	Land use permit application	2
Federal Environmental Assessment Review Office	Cabinet Decision (Government Organization Act - Section 14)	Environmental Assessment and Review Process	8
National Energy Board	National Energy Board Act - Section 20	Certificate of public convenience and necessity application	2
Northern Pipeline Agency	Northern Pipeline Act - Section 3	Preparation of environmental and socio-economic terms and conditions	1

*See Appendix 2.

Appendix 2

Federal Authority Regarding the Establishment of Northern Public Review Hearings

Canadian Radio-television and Telecommunications Commission

The Broadcasting Act of 1968 states:

19. (1) A public hearing shall be held by the Commission

(a) in connection with the issue of a broadcasting licence, other than a licence to carry on a temporary network operation; or
(b) where the Commission or the Executive Committee has under consideration the revocation or suspension of a broadcasting licence.

(2) A public hearing shall be held by the Commission, if the Executive Committee is satisfied that it would be in the public interest to hold such a hearing in connection with

(a) an amendment of a broadcasting licence;
(b) the issue of a licence to carry on a temporary network or operation; or
(c) a complaint by a person with respect to any matter within the powers of the Commission.

(3) A public hearing shall be held by the Commission in connection with the renewal of a broadcasting licence unless the Commission is satisfied that such a hearing is not required and, notwithstanding subsection (2), a public hearing may be held by the Commission in connection with any other matter in respect of which the Commission deems such a hearing to be desirable.

Canadian Radio-television and Telecommunications Commission and Canadian Transport Commission

The National Transportation Act of 1967 states:

45. (1) The Commission has full jurisdiction to inquire into, hear and determine any application by or on behalf of any party interested.

(2) The Commission may order and require any company or person to do forthwith, or within or at any specified time, and in any manner prescribed by the Commission, so far as is not inconsistent with the Railway Act, any act... and may forbid the doing or continuing of any act... and for the purposes of the Railway Act has full jurisdiction to hear and determine all matters whether of law or of fact.

(3) The Commission, as respects the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry on and inspection of property, and other matters necessary or proper for the due exercise of its jurisdiction, has all such powers, rights and privileges as are vested in a superior court.

Department of Indian Affairs and Northern Development

The Northern Inland Waters Act of 1970 states:

15. (1) A public hearing may be held by a (Water) Board in connection with any matter relating to its objects where the Board is satisfied that such a hearing would be in the public interest.

(2) A public hearing shall be held by a Board

(a) in connection with each application for a licence or for renewal of a licence;

(b) in connection with each application pursuant to section 24 for permission to enter upon, use, occupy, take and acquire any lands or any interest therein; and

(c) where it has under consideration the amendment or cancellation of licence;

but this subsection does not apply where the applicant in a case described in paragraph (a) or (b), or the licensee in a case described in paragraph (c), consents in writing to the disposition of the matter without a public hearing and, after publication of notice of a public hearing in connection with the matter pursuant to section 17, the Board receives no notice within ten days prior to the date of the proposed hearing that any person intends to appear and

make representations in connection with the matter or, where the Board has under consideration the amendment of a licence, the Board, with the consent of the Minister, declares the amendment to be required on an emergency basis.

(3) A public hearing under this section shall be held at such place within

(a) the Yukon Territory, in the case of the Yukon Territory Water Board; or

(b) the Northwest Territories, in the case of the Northwest Territories Water Board;

as the Board considers appropriate and may be adjourned by the Board from time to time and from place to place within Canada.

The Territorial Lands Act of 1952 states:

19. The Governor in Council may:

(h) make regulations or orders with respect to any question affecting territorial lands under which persons designated in the regulations or orders may inquire into a question affecting territorial lands and may, for the purposes of such inquiry, summon and bring before them any person under oath, compel the production of documents and do all things necessary to provide a full and proper inquiry.

Federal Environmental Assessment Review Office

The Cabinet Decision of December 20, 1973 states:

3. The Minister of the Environment in co-operation with other Ministers should establish:

(a) a procedure for administering the environmental assessment and review process including arrangements for the public to comment on the environmental issues, with provision for public hearings when appropriate.

The Government Organization Act of 1979 states:

14. Sections 5 to 7 of the said Act (Government Organization Act, 1970) are repealed and the following substituted therefore:

6. (1) The Minister of the Environment, in exercising his powers and carrying out his duties and functions under section 5k shall

(a) initiate, recommend and undertake programs, and co-ordinate programs of the Government of Canada, that are designed

(i) to ensure that new federal projects, programs and activities are assessed early in the planning process for potential adverse effects on the quality of the natural environment and that a further review is carried out for those projects, programs and activities that are found to have probable significant adverse effects and the results thereof taken into account, and

(ii) to provide to Canadians environmental information in the public interest.

National Energy Board

The National Energy Board Act of 1959 states:

20. (1) Subject to subsection (2), hearings before the Board with regard to the issue, revocation or suspension of certificates (of public convenience and necessity) or of licences for the exportation of gas or power or the importation of gas, or for leave to abandon the operation of a pipeline or international power line, shall be public.

(2) Where the Board revokes or suspends a certificate or licence upon the application or with the consent of the holder thereof, a public hearing need not be held if the pipeline or international power line to which the certificate or licence relates had not been brought into commercial operation under that certificate or licence.

(3) The Board may hold a public hearing in respect of any other matter if it considers it advisable to do so.

Northern Pipeline Agency

The Northern Pipeline Act of 1978 states:

3. The objects of this Act are ...

(c) to facilitate the efficient and expeditious planning and construction of the pipeline taking into account local and regional interests, the interests of the residents, particularly the native people, and recognizing the responsibilities of the Government of Canada and other governments, as appropriate, to ensure that any native claim related to the land on which the pipeline is to be situated is dealt with in a just and equitable manner;...

(e) to maximize the social and economic benefits from the construction and operation of the pipeline including the maximizing of the opportunities for employment of Canadians while at the same time minimizing any adverse effect on the social and environmental conditions of the areas most directly affected by the pipeline.

Appendix 3

Format of Hearing Proceedings

For discussion purposes the format of hearings, as provided in Appendix 4, has been classified in terms of two variables: the formality of the proceedings and the main purpose/content of the proceedings. This classification is general and provided only for illustrative purposes; it should not be construed as a formal or legal classification.

Formality of Proceedings

		Transcripts Published	Participants Under Oath and Legal Counsel Used	Cross Examination
Judicial	(J)	Yes	Yes	Yes
Formal	(F)	Yes	Yes	No
Informal	(I)	Yes	No	No
Meetings	(M)	No	No	No

Purpose/Content of Proceedings

Community (C) - to obtain local resident comment
Technical (T) - to obtain comments from experts and interested groups

Appendix 4

Public Review Hearings Conducted in the Yukon and the Northwest Territories

Hearings	Mandate			Panel			Proceedings	
	Scope	Subject	Establishment	Size	Composition	Format*	Duration	Location
Canadian Radio-television and Telecommunications Commission								
CBC Broadcast Licence Renewal Hearing Apr. 7-19 and Oct. 1978	Canada	socio-economic	Application for renewal of broadcasting licence	2	CRTC commissioners	IC	6 days	Inuvik, NWT Yellowknife, NWT Cambridge Bay, NWT Rankin Inlet, NWT Pond Inlet, NWT Frobisher Bay, NWT Fort Chimo, Que. Goose Bay, Nfld.
						FT		Ottawa/Hull
Special Committee Hearing Feb. 28 - Apr. 1980	Canada	socio-economic	Television broadcasting to remote areas, Jan. 1980	9	5 CRTC commissioners and 4 individuals (one from ITC)	IC	4 days	Whitehorse, YT Baker Lake, NWT Geraiton, Ont. Goose Bay, Nfld.
						IT	12 days	Ottawa/Hull
Bell Rate Increase Hearing Apr. 17 - June 30, 1978	Canada	financial	Application for carrier licence rate increase, Feb. 1980	1	CRTC commissioner	IC	8 days	Arctic Bay, NWT Pond Inlet, NWT Frobisher Bay, NWT Toronto, Ont. London, Ont. Ottawa, Ont. Montréal, Que. Quebec City, Que.
						JT	33 days	Ottawa/Hull
Canadian Transport Commission								
Air Transport Committee Hearings								
July 23, 1972	NWT	financial	Application for licences to operate commercial air services	2	CTC commissioners	JT	1 day	Inuvik, NWT
Apr. 2, 1974	YT and north BC	financial	Review ATC Decision 3595	1	CTC commissioner	JT	1 day	Whitehorse, YT
Mar. 19, 1974	NWT		Application for licence	1	CTC commissioner	JT	1 day	Yellowknife, NWT
Nov. 18, 1975	eastern NWT	financial	Amendment of and applications for licences	3	CTC commissioners	JT	1 day	Frobisher Bay, NWT
Jan. 9, 1979	NWT	financial	Amendment of and applications for licences	3	CTC commissioners	JT	1 day	Yellowknife, NWT
Jan. 18, 1979	NWT	financial	Amendment of and applications for licences	3	CTC commissioners	JT	1 day	Frobisher Bay, NWT
Jan. 13, 1981	NWT	financial	Amendment of licences and review ATC Decision 6046	3	CTC commissioners	JT	1 day	Rankin Inlet, NWT
Mar. 9, 1981	YT and NWT	financial	Amendment and transfer of and applications for licences	3	CTC commissioners	JT	several days	Whitehorse, YT Inuvik, NWT Yellowknife, NWT

* See appendix 3

Appendix 4 continued

Hearings	Mandate			Panel			Proceedings	
	Scope	Subject	Establishment	Size	Composition	Format*	Duration	Location
Department of Indian Affairs and Northern Development								
Water Management Hearings	Yukon	environmental	Placer mining regulations	9	Yukon Territory Water Board	IC	2-4 days	Dawson, Mayo and Whitehorse, YT
Water Licence Hearings	Yukon or NWT	environmental	Water use licence applicatoin and/ or renewal	9	Similar-sized boards for Yukon and for NWT: 3 federal public servants and 6 territorial residents recommended by commissioner, appointed by DIAND minister	IC	generally one day	Community nearest prposed water use.
Mackenzie Valley Pipeline Inquiry Mar. 3, 1975 - Nov. 19, 1976	Yukon and NWT	socio-economic and environmental	Order in Council P.C. 1974-641 pursuant to right-of-way (land use permit) application to DIAND, Mar. 1974	1	Appointed on recommendation of DIAND minister	JT	176 days 19 days 5 days	Yellowknife, NWT Inuvik, NWT Whitehorse, YT
						FC	69 days 19 days	35 Yukon and NWT communities, 10 southern Canada communities
Alaska Highway Pipeline Inquiry May 11 - July 15, 1977	Yukon	socio-economic	Contract let by DIAND pursuant to right-of-way (land use permit) application to DIAND, Aug. 1976	3	Chairman appointed by DIAND minister and one each recommended by YTG and CYI	FT	22 days	Whitehorse, YT
						IC	27 days	17 Yukon communities
Federal Environmental Assessment Review Office								
Alaska Highway Gas Pipeline Project Hearings								
- Interim Hearing June 13 - July 14, 1977	Yukon	environmental	Referred to EARP by DIAND, Mar. 1977	6	5 federal and 1 Yukon territorial public servants appointed by FEARO (panel representative attended AHPI hearings in communicities not visited by EARP panel)	IT	14 days	Whitehorse, YT Watson Lake, YT Upper Liard, YT Swift River, YT Teslin, YT Haines Junction, YT Destruction Bay, YT Brurwash LAnding, YT Beaver Creek, YT
- Joint NPA-FEARO Hearing (see NPA-FEARO) Mar. 19 - Apr. 28, 1979								
- Routing Alternatives Whitehorse/Ibex Region Hearing June 16-18, 1981	Yukon	environmental	Referred to EARP by DIAND, Mar. 1977	6	5 federal and 1 Yukon territorial public servants appointed by FEARO	IT	3 days	Whitehorse, YT
Shakwak Project Hearing Mar. 3-10, 1978	Yukon and northern B.C.	envrionmental	Referred to EARP by DPW, Aug. 1974	7	5 federal, 1 Yukon territorial and 1 B.C. public servant appointed by FEARO	IC	7 days	Whitehorse, YT Beaver Creek, YT Destruction Bay, YT Burwash Landing, YT Haines Junction, YT Champagne/Aishihik Band Hall

* See appendix 3

Appendix 4 continued

Hearings	Mandate			Panel			Proceedings	
	Scope	Subject	Establishment	Size	Composition	Format*	Duration	Location
Federal Environmental Assessment Review Office continued								
Eastern Arctic Offshore Drilling Project - South Davis Strait Hearing Sept. 8-14 1978	South-east region NWT	environmental	Referred to EARP by DIAND, Aug. 1977	4	Federal public servants appointed by FEARO (2 Inuit observers appointed)	IT MC	2 days 3 days	Frobisher Bay, NWT Pangnirtung, NWT Allen Island, NWT Lake Harbour, NWT Cape Dorset, NWT
Lancaster Sound Offshore Drilling Project Hearing Oct. 12-19 and Nov. 27-29, 1978	Lancaster Sound region, NWT	environmental	Referred to EARP by DIAND, Aug. 1977	5	Federal public servants appointed by FEARO (GNWT observer appointed)	IT MC	5 days 5 days	Pond Inlet, NWT Arctic Bay, NWT Grise Fiord, NWT Pond Inlet, NWT Resolute, NWT Creswell, Bay, NWT
Arctic Pilot Project Hearing Apr. 15-29, 1980	Lancaster Sound region, NWT	environmental and socio-economic	Referred to EARP by DIAND and Petrocan, Nov. 1977	7	6 federal and 1 GNWT public servants appointed by FEARO	IT MC	6 days 4 days	Resolute, NWT Grise Fiord, NWT Pond Inlet, NWT Arctic Bay, NWT Resolute, NWT
Norman Wells Oil Field and Pipeline Project Hearing August 11 - Sept. 1, 1980	Mackenzie Valley, NWT, and northern Alberta	environmental and socio-economic	Referred to EARP by DIAND, Feb. 1980	5	3 federal public servants and 2 non-gov't members; (one recommended by GNWT and one recommended by DIAND) appointed by FEARO and the Minister of DOE	IT IC	6 days 14 days	Yellowknife, NWT Norman Wells, NWT Fort Good Hope, NWT Fort Franklin, NWT Wrigley, NWT Hay River, NWT Fort Providence, NWT Fort Simpson, NWT Fort Rae, NWT Detah, NWT Yellowknife, NWT High Level, Atla. Fort Norman, NWT
National Energy Board								
Mackenzie Valley - Yukon Pipeline Hearing Apr. 12, 1976, - May 12, 1977	Canada	financial technical	Application for certificate of public convenience and necessity	3	NEB members	3T	202 days 6 days 3 days 3 days	Ottawa/Hull Whitehorse, YT Yellowknife, NWT Inuvik, NWT
Norman Wells Pipeline Project Hearing Oct. 7 - Nov. 12, 1980	Canada	financial technical	Application for certificates of public convenience and necessity and for order on tariffs	3	NEB members	3T	9 days 9 days 3 days	Edmonton, Alta. Yellowknife, NWT Ottawa/Hull
Northern Pipeline Agency - Federal Environmental Assessment Review Office								
Joint NPA-FEARO Alaska Highway Gas Pipeline Hearing Mar. 19 - Apr. 28, 1979	Yukon	socio-economic and environmental	Drafting of terms and conditions for AHP-Yukon Section. Continuation of AHP-EARP with NPA as sponsor (see FEARO, AHP-Interim Hearings, 1977)	9	3 appointed by NPA; 1 recommended by NPA; 1 by DIAND 1 by YTG 6 appointed by FEARO 5 federal and 1 YTG public servant	IT IC	6 days 13 days	Whitehorse, YT Faro, YT Beaver Creek, YT Destruction Bay, YT Haines Junction, YT Champagne/Aishihik Band Hall Watson Lake, YT Upper Liear, YT Teslin, YT Dawson, YT Whitehorse, YT

* See appendix 3